

RESOLUTION NO. 2019-12

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING
GUIDELINES FOR THE SUBMISSION AND TABULATION OF
PROTESTS IN CONNECTION WITH RATE HEARINGS CONDUCTED
PURSUANT TO ARTICLE XIIID, SECTION 6 OF THE CALIFORNIA
CONSTITUTION

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BE IT RESOLVED by the City Council of the City of Lodi, California as follows:

WHEREAS, Article XIIID, Section 6 of the California Constitution requires the City Council to consider written protests to certain proposed increases to utility charges (as used in this Resolution “charges” includes rates and fees); and

WHEREAS, this constitutional provision does not offer specific guidance as to who may submit protests, how written protests are to be submitted, or how the City is to tabulate protests; and

WHEREAS, upon adoption of this Resolution, any and all resolutions, or rules or regulations of the City in conflict with it, shall be repealed and shall have no further force or effect. This Resolution supersedes all prior resolutions of the City to the extent that such resolutions established guidelines for the submission and tabulation of protests in connection with rate hearings conducted by the City pursuant to Article XIIID, Section 6 of the California Constitution.

IT IS, THEREFORE, RESOLVED by the City Council of the City of Lodi that when notice of a public hearing with respect to the adoption or increase of wastewater, stormwater, or contracted solid waste charges has been given by the City pursuant to Article XIIID, Section 6(a) of the California Constitution, the following shall apply:

SECTION 1: Definitions.

Unless the context plainly indicates another meaning was intended, the following definitions shall apply in construction of these guidelines:

- A. “Parcel” means real property assigned an Assessor’s Parcel Number (APN) by the San Joaquin County Assessor, the owner or occupant of which is subject to the proposed charge that is the subject of the hearing.
- B. “Record Customer” and “Customer of Record” mean the person or persons whose name or names appear on City records as the person who has contracted for, or is obligated to pay for, utility services on a particular utility account.
- C. “Record Owner” or “Parcel Owner” means the person or persons whose name or names appear on the San Joaquin County Assessor’s latest equalized assessment roll as the owner of a Parcel.

- D. A "Fee Protest Proceeding" is not an election, but the City Clerk will maintain the confidentiality of protests as provided below and will maintain the security and integrity of protests at all times.

SECTION 2: Notice Delivery.

Notice of proposed utility charges and public hearings shall be as follows:

- A. The City shall give notice of proposed utility rates and/or charges via U.S. mail to all Record Owners and Customers of Record served by the City.
- B. The City will post the notice of proposed charges and public hearing at its official posting sites.

SECTION 3: Protest Submittal.

- A. Any Record Owner or Customer of Record who is subject to the proposed utility charge(s) that is the subject of the hearing may submit a written protest to the City Clerk by:
- (i) Delivery to the City Clerk's Office at 221 West Pine Street, Lodi, CA 95240, during published business hours;
 - (ii) Mail to the City Clerk at Post Office Box 3006, Lodi, CA 95241-1910; or
 - (iii) Personally submitting the protest at the public hearing.
- B. The front of the envelope containing the written protest should be marked "Protest".
- C. Written protests must be received by the end of the public hearing, including those mailed to the City. No postmarks will be accepted; therefore, any protest not physically received by the close of the hearing, whether or not mailed prior to the hearing, shall not be counted.
- D. Because an original signature is required, emailed, faxed, and photocopied protests shall not be counted.
- E. Although oral comments at the public hearing will not qualify as a formal protest, unless accompanied a written protest, the City Council welcomes input from the community during the public hearing on the proposed charge(s).

SECTION 4: Protest Requirements.

- A. A written protest must include:
- (i) A statement that it is a protest against the proposed charge(s) that is the subject of the hearing;
 - (ii) Name of the Record Owner or Customer of Record who is submitting the protest;
 - (iii) Identification of Assessor's Parcel Number, street address, or utility account number of the Parcel with respect to which the protest is made; and

- (iv) Original signature and legibly printed name of the Record Owner or Customer of Record who is submitting the protest.
- B. Protests shall not be counted if any of the required elements (i through iv) outlined in the preceding subsection "A" are omitted.

SECTION 5: Protest Withdrawal.

Any person who submits a written protest may withdraw it prior to close of the public hearing, by submitting to the City Clerk a written request that the protest be withdrawn. The withdrawal of a protest shall contain sufficient information to identify the affected Parcel and the name of the Record Owner or Customer of Record who submitted both the protest and the request that it be withdrawn.

SECTION 6: Multiple Record Owners or Customers of Record.

- A. Each Record Owner or Customer of Record of a Parcel served by the City may submit a protest. This includes instances where:
 - (i) A Parcel is owned by more than one Record Owner or more than one name appears on the City's records as the Customer of Record for a Parcel; or
 - (ii) A Customer of Record is not the Record Owner; or
 - (iii) A Parcel includes more than one Record Customer; or
 - (iv) Multiple parcels are served via a single utility account, as master-metered multiple family residential units.
- B. Only one written protest per Parcel, filed by the Record Owner or Customer of Record of the Parcel shall be counted in calculating a majority protest of the proposed charge(s) as provided by Government Code Section 53755(b). If the votes conflict, only the no vote to the proposed charge(s) will count.

SECTION 7: Transparency, Confidentiality, and Disclosure.

- A. To ensure transparency and accountability in the fee protest tabulation, while protecting the privacy rights of Record Owners and Customers of Record, protests will be maintained in confidence until tabulation begins following the public hearing.
- B. Once a protest is opened during the tabulation, it becomes a disclosable public record, as required by State law and will be maintained in City files for two (2) years.

SECTION 8: City Clerk.

The City Clerk shall not accept as valid any protest if he or she determines that any of the following is true:

- A. The protest does not state its opposition to the proposed charges.
- B. The protest does not name the Record Owner or Customer of Record of the Parcel identified in the protest as of the date of the public hearing.

- C. The protest does not identify a Parcel served by the City that is subject to the proposed charge(s).
- D. The protest does not bear an original signature of the named Record Owner of, or Customer of Record with respect to, the Parcel identified on the protest. Whether a signature is valid shall be entrusted to the reasonable judgement of the City Clerk, who may consult signatures on file with the County Elections Official.
- E. The protest was altered in a way that raises a fair question as to whether the protest actually expresses the intent of a Record Owner or Customer of Record to protest the charge(s).
- F. The protest was not received by the City Clerk before the close of the public hearing on the proposed charge(s).
- G. A request to withdraw the protest was received prior to the close of the public hearing on the proposed charge(s).

SECTION 9: City Clerk's Decisions Final.

The City Clerk's decision that a protest is not valid shall constitute a final action of the City and shall not be subject to any internal appeal.

SECTION 10: Majority Protest.

- A. A majority protest exists if written protests are timely submitted and not withdrawn by the Record Owners of, or Customers of Record with respect to, a majority (50% plus one) of the Parcels subject to the proposed charge.
- B. While the City may inform the public of the number of Parcels served by the City when a notice of proposed utility charge(s) is mailed, the number of Parcels with active customer accounts served by the City on the date of the hearing shall control in determining whether a majority protest exists.

SECTION 11: Tabulation or Protests.

At the conclusion of the public hearing, the City Clerk shall tabulate all written protests received, including those received during the public hearing, and shall report the result to the City Council. If the number of protests received is insufficient to constitute a majority protest, the City Clerk may determine the absence of a majority protest without validating the protests received, but may instead deem them all valid without further examination. Further, if the number of protests received is obviously substantially fewer than the number required to constitute a majority protest, the City Clerk may determine the absence of a majority protest without opening the envelopes in which protests are returned.

SECTION 12: Report of Tabulation.

If at the conclusion of the public hearing, the City Clerk determines that he or she will require additional time to tabulate the protests, he or she shall so advise the City Council, which may adjourn the meeting to allow the tabulation to be completed on

another day or days. If so, the City Council shall declare the time and place of tabulation, which shall be conducted in a place where interested members of the public may observe the tabulation, and the City Council shall declare the time at which the meeting shall be resumed to receive and act on the tabulation report of the City Clerk.

SECTION 13: This Resolution will become effective immediately upon adoption.

NOW, THEREFORE, BE IT RESOLVED that that the Lodi City Council does hereby approve the Guidelines for the submission and tabulation of protests in connection with the rate hearing conducted pursuant to Article XIID, Section 6 of the California Constitution, as set forth above.

Dated: February 6, 2019

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I hereby certify that Resolution No. 2019-12 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 6, 2019, by the following vote:

AYES: COUNCIL MEMBERS – Johnson, Kuehne, Nakanishi, and
Mayor Chandler

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None

WITNESS my hand and Seal of said City this 6th day of February, 2019.


JENNIFER M. FERRAIOLO
City Clerk